

have a tendency to preserve life, even without consent. But in all such cases it is the wise thing to have a consultation, if it be possible, and to keep careful records of the diagnosis, opinions before operation, and what was done and found. In all such operations without consent, the operator should use extraordinary care and should not depart in any way from what is recognized as the proper and general procedure; the law does not regard operative experiments without consent, with much favor. No operation not of emergency should ever be done without a full understanding between the physician and the patient, or the parents if the patient be a minor, and it is wise to have this understanding extend to and include other relatives of the patient, if such there be. If possible, without forcing the issue, it is well to have this consent in writing. Nowadays, few if any surgeons undertake a major operation with any restrictions implied; that is, they have the consent of the patient to do whatever may seem to be necessary after the operation has been begun; this is the only safe course. There should never be the slightest chance of misunderstanding as to this general consent to do what is necessary; if it is less than this, if the consent is qualified and when the operation is in progress some condition is found needing attention that was not specified, the operation should stop and the patient be allowed to become conscious before anything further is done. Failure to follow this course has resulted in heavy judgments against surgeons. When the right ear was to have been operated upon, and under the anesthetic the left ear was found to be in worse case and was the ear of operative attack, it was held a trespass on the person of the patient and a heavy verdict given. So, where in an operation to remove a foreign body from the foot, a sesamoid bone was removed without previous consent, it was held a trespass and a judgment given to the plaintiff. It is needless to say that an abortion should never be performed except after consultation and in the presence and with the assistance of another physician.

#### REPORTS ARE TO BE MADE, NOT ASSUMED.

When the law requires that a physician shall report certain things, it means that he shall actually make such a report and not suppose that it will be assumed from some other fact. Most people are not mind-readers, and those who are, are busy. A report is a report and must be made in writing to the proper person; ignorance of the law is no excuse. If a man chooses to practice medicine it is understood that he will familiarize himself with the duties which the law has placed upon him. In this connection comes a timely "news letter" from the State Board of Health:

A physician of Contra Costa County who was summoned to appear before the California State Board of Health at its last meeting to explain his failure to report a case of typhoid fever in a dairyman, stated in his defense that he had sent a specimen of blood to the State Hygienic Laboratory for examination, and that he considered this equivalent to reporting. He

was warned by the Board that formal notification to the health officer of cases of communicable disease is necessary, in order that the provisions of the law may be complied with. The Board is considering other cases of failure to report communicable diseases, and is determined to secure such reports from all physicians in the State.

Birth certificates will not be accepted for filing after one year from date of birth, according to a decision of the State Board of Health. In some cases, attempts have been made to file certificates several years after date of birth. The law does not authorize the filing of birth certificates after a reasonable length of time has expired, and the Board has set the period of one year as reasonable.

In reply to many inquiries concerning the matter of compelling dangerous syphilitic patients to take treatment, the Board has replied that it has no power under the law to compel treatment of any kind, but it may isolate persons who are dangerous to the public health.

#### HOSPITAL LIABILITIES.

The liability of a hospital for the negligent or careless acts of its employees or staff depends upon the character of the hospital. All state institutions, hospitals, asylums, and the like, are expressly without liability for torts due to the negligence or lack of skill or judgment of their employees; and the rule holds as to county or city and county institutions, strictly such. Nor is there liability in such institutions for insufficient or poor food. Private hospitals are of two sorts; charitable institutions and those for gain; railroad hospitals, though not for gain, are held not to be charitable institutions. The courts in the various states are not absolutely agreed as to the non-liability of charity hospitals, but the great weight of opinion is that they are not to be held in damages for the negligence of their employees or staff; in this state that is the rule. The argument is that such hospitals are supported by funds given for charity and that such gifts may not be diverted from that purpose to the payment of damages to individuals who may suffer from negligence, etc. With hospitals for gain or profit, however, the rule is quite otherwise; they are liable for the torts or wrongs of their employees due to negligence, carelessness, lack of skill and the like. The trend of all recent decisions is that such hospitals, even though they may have exercised due care in the hiring of servants, are responsible for the negligent acts of such servants. Thus a hospital was held in damages for the death of a typhoid patient who jumped from the open window in the absence of the nurse from the room for a brief space; another was held for the burning of the patient by a hot water bag placed in the bed by the nurse; and another for mistakenly giving the patient a solution of bichloride of mercury. But it must be well proved that the act complained of was the act or failure to perform the act that caused the wrong. Such is the general status of hospitals in their legal relation to the public, and it seems reasonable.